

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Connors	Team: Squad #9	CCRB Case #: 201705176	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/15/2017 8:20 PM	Location of Incident: Inside of the 52nd Precinct stationhouse	Precinct: 52	18 Mo. SOL 12/15/2018	EO SOL 12/15/2018	
Date/Time CV Reported Tue, 06/27/2017 9:54 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/27/2017 9:54 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Mahon	26892	955116	052 PCT
2. POM James Tobin	04354	951340	E S U

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Charles Cavallaro	4758	938197	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Mahon	Force: Police Officer Brian Mahon used physical force against § 87(2)(b)	
B.POM James Tobin	Force: Police Officer James Tobin used physical force against § 87(2)(b)	

Case Summary

On June 15, 2017, at approximately 8:20 p.m., § 87(2)(b) was inside the prisoner holding pen located within the 52nd Precinct stationhouse in the Bronx. While waiting to be released, § 87(2)(b) observed another prisoner, identified via the investigation as § 87(2)(b) engaged in a verbal interaction with officers inside of an adjacent holding cell. During this interaction, § 87(2)(b) was removed from the prisoner holding pen and taken to another area of the stationhouse. After an indeterminate amount of time, § 87(2)(b) was escorted back into the holding pen by approximately five to ten officers. § 87(2)(b) believed that § 87(2)(b) had been strip-searched during the time he was away from the holding pen area, but did not witness this action.

When § 87(2)(b) was placed back inside the holding cell, § 87(2)(b) overheard an officer state that a quantity of crack-cocaine had been recovered from § 87(2)(b)'s rectum. While being placed inside the holding cell, § 87(2)(b) complained of rectal pain, and requested medical attention. § 87(2)(b) did not observe any officer present respond to this request for medical attention. § 87(2)(b) then told the officers he was not going to wait in his cell until he received medical attention. At some point during this conversation, which § 87(2)(b) could not clearly explain, officers "jumped" § 87(2)(b) inside of the holding cell.

§ 87(2)(b) was handcuffed when the officers, identified via the investigation as PO Brian Mahon and PO James Tobin of the 52nd Precinct (now assigned to the Emergency Services Unit), allegedly threw him to the floor of the holding pen. § 87(2)(b) was unable to describe the physical actions of the officers when they "jumped" § 87(2)(b) but remembered seeing an officer (whom the investigation was unable to identify) knee him in his chest when he was lying on floor of the holding pen (**Allegation A and Allegation B**). After being taken to the floor, § 87(2)(b) fought back against the officers, but § 87(2)(b) could not describe the actions he had taken against the officers.

After being restrained, PO Mahon and PO Tobin left § 87(2)(b) inside the prisoner holding pen. Shortly after, § 87(2)(b) was removed from the holding pen, and released from police custody. § 87(2)(b) left the 52nd Precinct stationhouse and had no further interaction with these officers (**Board Review 01**).

There is no known video footage of this incident. This case exceeded 90 days due to attempts to locate and obtain statements from witnesses and difficulties in scheduling officers.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b)'s arrest.
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- On October 17, 2017, a request was sent to the New York City Comptroller's Office in regards to any Notice of Claim that may have been filed in regards to this complaint. It will be added to the case file upon receipt. (**Board Review 03**).

Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b) **Encl. Board Review 04).**
- PO Mahon has been a member of service for four years. This is his fourth CCRB complaint. In case number 201608954, two abuse of authority allegations (vehicle stop and search of person), were pleaded against him. The complaint was closed as complainant uncooperative. In case number 201701656, four abuse of authority allegations (vehicle stop, vehicle search, premises entered and/or searched, and refusal to provide name/shield) were pleaded against him. All four of these allegations were closed as unsubstantiated. In case number 201707427, one force allegation (physical force) was pleaded against him. At the time of this report, that complaint is still being investigated. **(Board Review 05).**
- PO Tobin has been a member of service for six years. This is his fourth CCRB complaint. In case number 201505254, one force allegation (physical force) was pleaded against him. The complaint was closed as complainant unavailable. In case number 201605754, one abuse of authority (stop of person) and one discourtesy allegation (word) was pleaded against him. The complaint was closed as complainant unavailable. In case number 201606347, one force allegation (gun pointed, two abuse of authority allegations (frisk and search of person), and one discourtesy allegation (word) were pleaded against him. Each allegation was closed as exonerated or unsubstantiated **(Board Review 06).**

Potential Issues

- The investigation made numerous attempts to locate and contact the victim in this complaint, § 87(2)(b) in order to obtain a sworn statement in regard to this incident. § 87(2)(b)'s arrest report provided contact information for his mother § 87(2)(b) who was contacted about § 87(2)(b)'s whereabouts. § 87(2)(b) was unable to provide any additional contact information for § 87(2)(b) but stated that he did keep his mailing address listed at her residence. Additional database searches for § 87(2)(b) were conducted but ultimately the investigation was unable to locate and obtain a sworn statement from him **(Board Review 07).**
- The investigation attempted to locate and contact the witnesses who were present inside of the prisoner holding pen during this incident. The 52nd Precinct prisoner holding pen roster from the date of incident provided the names of three potential witnesses; § 87(2)(b) and § 87(2)(b) § 87(2)(b) who had been arrested together for the same crime. As minors, their arrest reports provided the names, addresses, and phone numbers for each individual's mother. The investigation contacted each of their mothers. Of the three witnesses, only § 87(2)(b) § 87(2)(b) provided a phone statement. In his phone statement, § 87(2)(b) § 87(2)(b) stated that several officers had punched and kicked to § 87(2)(b)'s stomach and legs, however he was unable to describe the officers or specify which officer took what action. Ultimately, § 87(2)(b) § 87(2)(b) did not provide a sworn statement as he became uncooperative with the investigation **(Board Review 08).**

Findings and Recommendations

Explanation of Subject Officer Identification

While § 87(2)(b) was unable to provide a detailed description of the officers involved, the investigation identified the subject officers via hand-written Threat, Resistance or Injury Worksheets prepared by PO Mahon and PO Tobin for this incident. Furthermore, both officers have memo book entries related to this incident. As such, **Allegation A** and **Allegation B** were pleaded against PO Mahon and PO Tobin, respectively.

Allegations not pleaded

Abuse of Authority: Strip-searched: An officer strip-searched § 87(2)(b)

§ 87(2)(b) alleged that the officers involved in this incident had removed § 87(2)(b) from the prisoner holding pen and had taken him to another area inside of the precinct, where he was strip-searched. § 87(2)(b)'s arrest report, prepared by PO Tobin, indicated that a strip search had been conducted and a quantity of crack-cocaine had been recovered from § 87(2)(b). As such, a strip search allegation was initially pleaded against PO Tobin and PO Mahon.

During their CCRB interviews, PO Tobin and PO Mahon testified that a strip search had not been conducted during this incident. The officers were consistent in describing a physical struggle in which § 87(2)(b) attempted to prevent officers from searching his person. During this struggle, a small sphere-shaped object had fallen out from § 87(2)(b)'s waistband. Inside of this object, a quantity of crack-cocaine was recovered. Furthermore, Sgt. Charles Cavallaro, the Anti-Crime supervisor on duty during this incident, provided testimony that was consistent with PO Tobin and PO Mahon.

While § 87(2)(b)'s arrest report corroborated § 87(2)(b)'s assertion that a strip search had been conducted, he himself did not witness the alleged action take place. When questioned about the alleged strip search, the officers were consistent in attributing the strip search notation in the arrest report as a clerical error made by PO Tobin. Furthermore, the 52nd Precinct Command Log entries from the date of incident did not have a notation of a strip search being conducted.

Without a sworn statement from the victim, the investigation had insufficient evidence to plead a strip search allegation. Therefore, a strip search allegation was not pleaded.

Allegation A – Force: Police Officer Brian Mahon used physical force against § 87(2)(b)

Allegation B – Force: Police Officer James Tobin used physical force against § 87(2)(b)

§ 87(2)(b) alleged that while he was being held inside the prisoner holding pen inside of the 52nd Precinct stationhouse, he observed officers throw § 87(2)(b) to the ground and an officer knee him in his stomach while he was handcuffed and lying on the ground of the prisoner holding pen.

During their CCRB interviews, PO Mahon, PO Tobin and Sgt. Cavallaro stated that while out on routine patrol, they observed a large group of approximately 20-40 male individuals congregating on the sidewalk in the vicinity of 149th Street and Briggs Avenue in the Bronx. The group was given several commands to disperse; however, § 87(2)(b) refused to leave the area. PO

Mahon then placed him under arrest for disorderly conduct. PO Mahon, PO Tobin, and Sgt. Cavallaro transported § 87(2)(b) to the 52nd Precinct stationhouse because he had no form of identification on his person.

At the stationhouse, § 87(2)(b) was frisked and then searched at the front desk by PO Mahon. While conducting this frisk, PO Mahon felt a round bulge on § 87(2)(b). PO Mahon described this bulge as a small spherical object secreted in § 87(2)(b)'s pant waistline. PO Mahon informed PO Tobin of this observation, and asked § 87(2)(b) what the object was. § 87(2)(b) told PO Mahon that it was nothing. When PO Mahon went to remove the object, § 87(2)(b) began to flail violently, and threw his body onto the floor in front of the desk. Sgt. Cavallaro ordered PO Mahon and PO Tobin to remove § 87(2)(b) to the holding pen area. While escorting § 87(2)(b) to the prisoner holding pen area, he again began to violently flail, and fell to the floor.

During this interaction, PO Mahon and PO Tobin acknowledged they had utilized body holds to restrain § 87(2)(b) for the purpose of retrieving the object PO Mahon had felt within his pant waistline. During the struggle, the object shimmied up from § 87(2)(b)'s waistline and onto the floor, where the object was recovered. Ultimately, 23 bags of crack and two large crack rocks were recovered from the object secreted in § 87(2)(b)'s pants. PO Mahon and PO Tobin both denied utilizing hand-strikes and foot-strikes against § 87(2)(b) during this interaction incident (**Board Review 09 and 10**). The officers' account of their actions during their CCRB interview is consistent throughout their TRI reports, which were prepared immediately after this incident had occurred (**Board Review 11**).

During his CCRB interview, Sgt. Cavallaro stated that he had asked PO Mahon and PO Tobin if they had utilized any hand-strikes or foot-strikes against § 87(2)(b) which they denied. Sgt. Cavallaro testified that he had also asked if the officers had to remove any article of clothing from § 87(2)(b) in order to retrieve the object. The officers replied that the item had fallen out from his pants during the struggle (**Board Review 12**).

§ 87(2)(b), § 87(2)(g)

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Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date